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October 28, 2008

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Notice of Ex Parte Presentation*: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92

Dear Ms. Dortch:

Today, Charlie Hunter, of Broadview Networks, Inc., Susan Berlin, of NuVox, Brad Lerner, of Cavalier Telephone, Lisa Youngers, of XO Communications, and Brad Mutschelknaus and the undersigned, of Kelley Drye & Warren, LLP, met via teleconference with Greg Orlando, Legal Advisor for Commissioner Tate. Our discussion focused on points addressed previously in filings made by the meeting participants in the above-captioned docket. These points are summarized in the attached documents.

I have also attached to this letter a Press Release issued yesterday by a broad group of consumer advocates, state regulators, rural carriers, midsize carriers, wireless companies and competitive providers urging the Commission to put out for public comment any proposed rules revising its intercarrier compensation and USF regimes.

Please contact the undersigned at (202) 342-8531, if you have any questions about this letter.

Respectfully submitted,

Genevieve Morelli

Genevieve Morelli

Attachments

Broadview Networks, Inc.
Cavalier Telephone
NuVox
XO Communications, LLC
October 28, 2008

INTERCARRIER COMPENSATION & UNIVERSAL SERVICE REFORM PROPOSALS THAT WOULD CAUSE IMMEDIATE HARM TO CLECS

1. The FCC would overreach its authority in (a) moving intrastate access rates to interstate access rate levels (even if only for an interim period); and (b) dictating to the states the methodology for setting rates for intrastate access traffic. Section 251(b)(5) does not grant the FCC authority to take these actions.

   If this dubious legal approach is contained in the Order, the Commission should not cause "rate shock" to competitive carriers by adopting a rapid 2-year transition period for moving intrastate access rates to interstate levels. Rather, a 5-year transition should be adopted, which is especially warranted in today's economic climate.

2. The Commission should not change the cost methodology for setting intercarrier compensation rates to short-run marginal cost, which does not accurately reflect the cost structure in the industry. Even if states will not immediately set rates based on that methodology, the mere adoption of that methodology would send a strong signal to the financial community that would harm CLECs' ability to raise capital to deploy broadband infrastructure.

3. The Commission should not disrupt existing and longstanding network arrangements, which are included in interconnection agreements, by adopting new interconnection rules that favor the incumbents. Central to the current regulatory regime is the right of CLECs to request direct interconnection at any technically feasible point at cost-based rates. Today, pursuant to Sections 251 and 252, interconnection arrangements are negotiated between ILECs and CLECs and then submitted to state commissions if the parties cannot reach agreement. That process should continue, and any modifications should not be included in the Order.

4. If the Commission classifies all IP-to-PSTN traffic as an information service, the Commission must specify that LECs are permitted, at their discretion, to provide transmission for IP-enabled services as a common carrier telecommunications service.

5. Any access revenue recovery mechanism must be competitively neutral. SLC cap increases and any universal service funding mechanism (including any new restructuring mechanism) must be available on a competitively-neutral basis to all carriers.

6. A "hybrid" numbers/revenue-based USF contribution system is not competitively neutral and would create significant administrative burdens on carriers. A hybrid system would disproportionately affect customers who use thousands of numbers such as government, universities, and businesses with "DID." Moreover, the Commission should not move to any numbers-based system without determining how to deal with connections that do not have numbers.

THE STATE OF THE RECORD ON THE USE OF SHORT-RUN INCREMENTAL COST AS A PRICING METHODOLOGY

"...setting prices at marginal cost would obviously leave the telecommunications company unable to recover its fixed costs." *Qwest Communications Comments, CC Docket No. 01-92 (Aug. 21, 2001) at 42.*

"Firms must be able to recover their average costs over the long run or else they will go out of business...A model based on 'short-run marginal cost,' where prices would fall even below TELRIC levels, would be more incoherent still." *SBC Communications Reply Comments, WC Docket No. 03-173 (Jan. 30, 2004) at 14.*

"Pricing at marginal cost for all services leaves the shared and common costs of the firm unrecovered. Such pricing is unsustainable, causing firms to exit, and is therefore not efficient in a dynamic sense." *BellSouth Corporation Reply Comments, WC Docket No. 03-172 (Dec. 16, 2003) at n. 105).*

ESTIMATED NEGATIVE IMPACT OF THE CHAIRMAN'S PLAN

"The net effect of the order appears to be a decline in access-based revenue...that would have a materially negative impact on free cash flow (FCF) and capital availability. We estimate the average company in the group impacted by the ruling would experience a 10% revenue decline and a 38% decline in FCF. We would also expect multiple contraction and skepticism toward investing in the group by debt and equity investors for some time should the order pass." *Raymond James, Equity Research, " Intercarrier Compensation Reform: Potential Impact From an FCC Order" (Oct. 27, 2008) at 1.*

"The Cash Flow Death Spiral. We believe the impact to the group from such a move by the FCC would be swift and negative." *Id. at 3.*

"Does Anyone Win? Yes, the regional Bell operating companies (RBOCs) should come out way ahead on this....The access revenue they will pocket without any requirements to give it back will be very significant...." *Id.*

For Immediate Release – Monday, October 27, 2008

Widespread and Diverse Voices Urge Transparency at the FCC

Public Comment Essential on Intercarrier Compensation and USF Proposals

Washington, DC – Today, a broad group of consumer advocates, state regulators, rural carriers, midsize carriers, wireless companies and competitive providers joined together to urge the FCC to put out for public comment any proposed rules revising its intercarrier compensation and USF regimes.

The participants indicated that, while they may disagree with one another about how best to reform the nation's intercarrier compensation and USF systems, they are united in their belief that adopting any comprehensive proposed rule changes on November 4 without public comment on the specifics could be potentially devastating to the nation's economy and its consumers.

The groups banding together at a press conference to send this critical message to the FCC included the National Association of Regulatory Utility Commissioners (NARUC), National Association of State Utility Consumer Advocates (NASUCA), Independent Telephone and Telecommunications Alliance (ITTA), COMPTEL, National Telecommunications Cooperative Association (NTCA), Rural Cellular Association (RCA), USA Coalition, and Broadband Service Providers Association (BSPA).

Additionally, the following associations, coalitions, and companies collectively urge the FCC to adopt comprehensive changes to its intercarrier compensation and USF regimes only after the proper level of transparency and public input on the specific proposals has occurred:

ASSOCIATIONS

- National Association of Regulatory Utility Commissioners, www.naruc.org
- National Association of State Utility Consumer Advocates, www.nasuca.org
- Broadband Service Providers Association
- COMPTEL, www.comptel.org
- Independent Telephone and Telecommunications Alliance, www.itta.us
- National Telecommunications Cooperative Association, www.ntca.org
- Rural Cellular Association, www.rca-usa.org
- USA Coalition

INDIVIDUAL COMPANIES

- 360networks (USA) Inc., www.360.net
- Alpheus Communications, L.P., www.alpheuscommunications.com
- Broadview Networks Inc., www.broadviewnet.com
- Canby Telcom, www.canbytel.com
- Cavalier Telephone, LLC, www.cavtel.com
- Cellular South, www.cellularsouth.com
- Corr Wireless, www.corrwireless.com
- Covad Communications Company, www.covad.com

- Dakota Central Telecommunications Cooperative, www.daktel.com
- DeltaCom, Inc., www.deltacom.com
- Farmers Telecommunications Cooperative, Inc., www.farmerstel.com
- Granite Telecommunications, LLC., www.granitenet.com
- Great Plains Communications, Inc., www.gpcom.com
- Hardy Telecommunications, Inc., www.hardynet.com
- Hypercube, LLC, www.hypercube-llc.com
- Integra Telecom, Inc., www.integratelecom.com
- MTPCS, LLC d/b/a Cellular One, www.cellularnation.com
- NuVox, www.nuvox.com
- One Communications Corp., www.onecommunications.com
- PAETEC, www.paetec.com
- Pigeon Telephone Inc., www.pigeontelephone.com
- RCN Telecom Services, Inc., www.rcn.com
- Southern Communications Services, Inc., d/b/a SouthernLINC Wireless, www.southernlinc.com
- Texas 10, LLC
- Thumb Cellular, www.thumbcellular.com
- tw telecom inc., www.twtelecom.com
- U.S. TelePacific Corp d/b/a TelePacific Communications, www.telepacific.com
- US Cellular, www.uscellular.com
- XO Communications, LLC, www.xo.com
- YourTel America, Inc., www.yourtelamerica.com

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